

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANDREW M. TAYLOR,

Plaintiff,

-against-

02-CV-0753
(LEK/GHL)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on May 17, 2005 by the Honorable George H. Lowe, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by the Defendant, which were filed on June 20, 2005.

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” Id. This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

As discussed in the Report-Recommendation, the Commissioner did not examine the combination of the Plaintiff’s impairments as required under Dixon v. Shalala, 54 F.3d 1019, 1031

(2d Cir. 1995). In addition, the Commissioner did not thoroughly analyze the Plaintiff's subjective complaints about pain as required under 20 C.F.R. § 404.1529(c)(3). Moreover, if the Commissioner again determines that the medical opinions of Dr. Rhode shall not have controlling weight, he must first consider the factors set out in 20 C.F.R. § 416.927(d)(2). As a result, the Court concurs with the other recommendations for remand made by Magistrate Judge Lowe. The Court acknowledges that 20 C.F.R. § 404.1567(b) has been misstated in the Report-Recommendation but nevertheless adopts the Report-Recommendation of the Magistrate Judge for the reasons before mentioned.

Accordingly, it is hereby

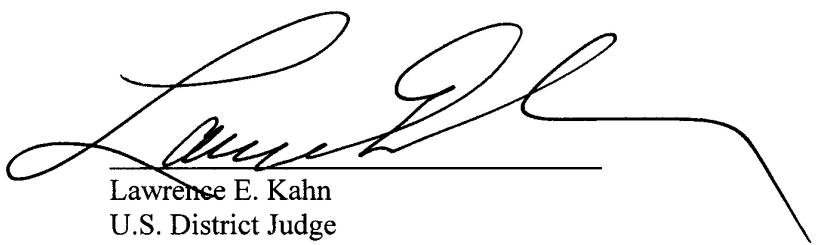
ORDERED, that the Report-Recommendation is **APPROVED** and **ADOPTED**; and it is further

ORDERED, that this matter be remanded to the Commissioner, pursuant to 42 U.S.C. § 405(g), for further proceeding consistent with the Report-Recommendation dated May 17, 2005; and it is further;

ORDERED, that the Clerk serve a copy of this order on all parties.

IT IS SO ORDERED.

DATED: September 12, 2005
Albany, New York



Lawrence E. Kahn
U.S. District Judge